

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

James Cass Sater, Executor for The Estate of Warren L. Mason v.  
City of San Diego (Slope Failure at 2550 Via Barletta, Mt.  
Soledad)

We are pleased to inform you that the Honorable Alpha L.  
Montgomery, Judge of the Superior Court, has given his intended  
decision on August 28, 1985, in favor of the City at the  
conclusion of the trial.

FACTS

The plaintiff in this suit is the executor of an estate  
owning a large single family residence on the north face of Mt.  
Soledad at 2550 Via Barletta.

The house was built in 1965 on a building pad created by  
cutting and filling natural slopes, the fill slope being 50 feet  
in height.

Visible evidence of earth movement on the subject property

was noted in 1979, 1981 and 1982. Signs of serious cracking and distress to the house appeared in 1981. The firm of Geotechnical Exploration, Inc. of San Diego was hired by the executor to investigate the cause of the problem. That investigation concluded that the property was underlain by a large (32 acre) ancient landslide which was active and had potential for future movement. These findings were reported to the City Engineering Department with a recommendation that they initiate a more detailed investigation.

The Engineering Department hired the firm of Leighton and Associates, Inc., San Diego, to review Geotechnical Exploration's report. Leighton concluded that a large deep-seated landslide existed approximately as shown by Geotechnical Exploration and agreed with their conclusion that earth movement was occurring at depths of 35 feet and 100+ feet but concluded there was insufficient evidence to conclude the entire ancient landslide mass was actively moving or to assess its stability.

Plaintiff sought to initiate an assessment district under the Geologic Hazard Abatement Districts Act but was rejected by the City Engineering Department on the basis that the hazard and its boundaries were not identified specifically enough to proceed under the Act.

Plaintiff sued the City in January, 1983, for damages of at least \$1,250,000 for inversely condemning its property and for an injunction requiring the City to abate a nuisance by further investigation and stabilization of plaintiff's and other properties.

Plaintiff claimed that the City caused the landsliding through various public improvements allowing water to penetrate the soil and by fill soils under the cul de sac of Via Barletta above plaintiff's property causing movement of plaintiff's fill soils. Plaintiff at trial claimed the boundaries of the ancient landslide were much larger than originally determined.

#### THE LITIGATION AND COURT DECISION

The trial commenced on August 7, 1985, before a judge without a jury. Plaintiff dropped all legal theories except inverse condemnation and the only issue to be decided was the City's liability.

The judge rejected plaintiff's contention that the huge ancient landslide was active and concluded that the City improvements were not a substantial cause of the more localized earth movement. The ruling by the judge was given on August 28, 1985, immediately after the conclusion of the trial.

The trial attorney was Chief Deputy City Attorney C. Alan Sumption.

Respectfully submitted,

JOHN W. WITT

City Attorney

JWW:CAS:jkp

RC-85-22